



National Sexual Violence and Child Protection Team

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TO: Detective Inspector Dave Kirby
Manager Sexual Violence Child Protection Team

FROM: Detective Sergeant Natasha Allan
National Co-ordinator Child Protection

DATE: 11 August 2016

SUBJECT: Gisborne File Review 140408/3156

1. Purpose of this Report

This report is in response to a request by Detective Senior Sergeant Dave De Lange from Eastern for an independent review of the investigation and resolution of this file.

This request arises due to recent media interest and reporting of the Education Councils Disciplinary action against the suspect in this matter, Samuel BACK, in which the media inferred a conflict of interest involving Detective Sergeant (D/S) Theo ACKROYD, (O/C Gisborne Child Protection Team) who oversaw this investigation while concurrently serving as Board Chair at Gisborne Intermediate school where BACK was employed.

This report therefore seeks to review the investigation against current best practice.

2. Source Material

The review of the investigation has been completed from information available including, an electronic copy of the file supplied to me on a USB drive, (the original file is with the Crown) and NIA case management records in respect of this investigation.

3. Background

On the 8th April 2014 Police received a report of concern via the CYF Contact centre from Dr Mary Stonehouse, Paediatrician at Tairāwhiti District Mental Health unit. Dr Stonehouse outlined concerns about a relationship between a patient 13 year old Reiha McCLELLAND and her former teacher Samuel BACK, who along with his wife Angela MEPHAM had been visiting Reiha on the ward.

Upon receiving this referral Police deemed the case met the Child Protection Protocol (CPP) and on the 8th April 2014 the matter was assigned to Detective Constable (D/C) Richard DOWNES for case assessment under the supervision of D/S ACKROYD.

The file was subsequently assigned to D/C DOWNES as an Investigation in progress on the 9th April 2014.

An investigation commenced during which Police obtained relevant Telco data and spoke with Reiha, her parents and BACK.

Reiha did not disclose any criminal offending and appeared guarded in her response to Police.

BACK denied any wrongdoing and indicated that he had taken on a counselling role to offer his support and comfort when he had become aware Reiha was suffering from a compulsion to self harm. He confirmed this support and guidance continued after she had left school and admitted that he had made some poor choices.

At the conclusion of the investigation it was determined there was no evidence of criminal offending by BACK and the matter was filed.

On the 31st July 2014 Reiha committed suicide. The suicide was reported to the Coroner file number: 140801/0630. It is currently progressing through the coronial process.

In May 2016 media reported on the Education Councils Disciplinary Tribunal action against BACK. Through this reporting media drew attention to a potential conflict of interest involving D/S ACKROYD, O/C Gisborne Child Protection.

Reporting highlighted that communications issued in his role as board chair supporting BACKs application for name suppression had been sent via his Police email account and that his apparent support of BACK seemed incongruous with his Police role.

4. Circumstances

In 2013, 13 year old Reiha was a Year 8 student at Gisborne Intermediate School.

In September 2013 her teacher BACK started acting in a counselling role for Reiha who was suffering a compulsion to self-harm. A relationship developed between Reiha, BACK and his wife MEPHAM a teacher at Wainui Beach School.

As a result of this relationship Reiha occasionally stayed overnight at their home without her parents knowledge, including occasions when MEPHAM was away. Email and text correspondence between Reiha and BACK also occurred.

Although aware of Reihas mental state and compulsion to self-harm neither BACK nor MEPHAM advised the school or her parents of their concerns.

In 2014 Reiha left Gisborne Intermediate and started at Napier Girls in a boarding capacity. Correspondence continued via emails, letters and text messages.

In March 2014 Reiha left boarding school and returned home to Gisborne. The same night she ran away from home. She contacted BACK and MEPHAM who drove to pick her up. They did not contact her parents who had reported her missing to Police.

She was subsequently located by Constable Andrew TRAFFORD in their car parked on the side of the road.

As a result of her depressive episode Reiha was assessed by the mental health team DAO, she requested either BACK or MEPHAM be with her while she was undergoing assessment.

During this Hinemoa McClelland, Reiha's mother observed BACK stroking and patting Reiha. Due to MEPHAM being present she didn't think much of it, believing that BACK and MEPHAM were good people coming to the aid of her daughter.

Reiha was admitted to Tairāwhiti District Mental Health ward due to 'suicidal ideation'. Whilst on the ward the ROC was made. After a short stay she was subsequently transferred to the Rangatahi Unit at Porirua Hospital.

5. Report of Concern

The report outlined that while Reiha had been a patient in the Tairāwhiti District Mental Health ward her former teacher BACK and his wife MEPHAM had visited Reiha. In the doctors opinion they were involved with Reiha over and above what would be expected from a teacher and partner.

During these visits night nursing staff had observed Reiha going in and out of the ward with the couple against her parents instructions.

It outlined that during rounds nurse Rhian GRIFFITHS went in to check on Reiha, she observed BACK lying on the bed and Reiha sitting cross legged. They were holding hands, they quickly separated upon being observed.

6. Investigation

Review of Police action showed upon receipt of the ROC the case was deemed CPP and was assigned to D/C DOWNES for case assessment before moving into Investigation in progress.

On the 9th April 2014 two NIA narrative entries were created by RDAV14 (D/C DOWNES) on behalf of TAD960 (D/S ACKROYD).

The first entry details a phone call that was made to Police on the 7th April 2014 from Reiha's mother Hinemoa McCLELLAND. During that conversation she outlined circumstances as detailed above.

She further advised D/S ACKROYD that after Reiha had been transferred to the Rangatahi Unit in Porirua Hospital she had seen a number of text messages on her daughter's cell phone between BACK and Reiha that had caused her some concern. Some appeared general banter but others were more intimate. She added that the text contact, even if innocent may be inappropriate for a teacher/student.

The second entry details a phone call made to Police on the 8th April 2014 from an Annette (there is a question mark next to this) from the Child and Adolescent Mental Health Services (CAMHS) advising that Charge Nurse Deb McKay had supposedly seen Reiha sitting on BACKS knee.

Two days after receiving the file D/C DOWNES made contact with Hinemoa McCLELLAND and as a result of the alleged text messages, he sought permission to gain access to Reiha's phone to enable it to be forensically examined.

D/C DOWNES met with Mr Don NIVEN, Principal at Gisborne Intermediate School and informed him of the report of concern and that BACK would be asked to have no further contact with Reiha. Mr NIVEN was cooperative and happy to assist wherever possible.

On the 17th April 2014 BACK was contacted by D/C DOWNES advising him that both he and MEPHAM were to have no further contact with Reiha. The explanation given was that Reiha needed to reconnect with her parents. At that point BACK was not advised there was an investigation taking place into his relationship with her.

Telco Analysis

Examination of Reiha's phone uncovered a number of photographs, these were non explicit selfies that appeared to have been taken by Reiha placing her inside BACK and MEPHAM's home address.

Production orders were sought for the cellphones used by Reiha, BACK and MEPHAM for conversations between the dates of 1st November 2013 to the 22nd May 2014.

Analysis of the text messages showed high volume contact between BACK and Reiha. They had been communicating for a number of months, the text messaging was constant and resulted in 194 pages of data (between 27 December 2013 and 3 April 2014 they sent 4000 messages see NZ Teachers Disciplinary Tribunal Report attached as Appendix¹)

D/C DOWNES identified that Reiha was reaching out to BACK as she struggled with various topics within her life, ie. School, friends, relationships and home life. Messaging between the two would begin first thing in the morning and would continue through the day until they both retired to bed.

The texts and emails were of an increasingly intimate and intense nature, including that he missed her, that she was loved, that he wanted to see her and referring to her in affectionate terms. He often referred to Reiha as darling and Reiha often call him Big Boy.

Throughout the course of his communications with Reiha, BACK told her not to tell anyone about them, telling her he could get in trouble.

There were no sexually explicit messages in any of the analysed correspondence.

D/C DOWNES requested data from Reiha's email account. Again a large amount of correspondence between BACK and Reiha was located dating back to September 2013.

Initially this email contact was in relation to student/teacher discussion on homework and the critique of that. As Reiha's time at Gisborne Intermediate came to a close she began emailing BACK via his own personal email account. These emails covered the topics as outlined above. A summarised version of these emails and the concerning content is in the attached Appendix 1.¹

Along with the texts and emails, Reiha's mother located two letters written by BACK to Reiha. One gave insight and details for her transition from Intermediate to high school and the other was a personal letter with more emotion within it.

Police were also made aware BACK had given Reiha gifts of a guitar, clothing and books.

As well as correspondence between BACK and Reiha Police also analysed texts between BACK and his wife MEPHAM.

¹ Appendix 1 - New Zealand Teachers Disciplinary Tribunal Report

One text in particular had concerning connotations, this was sent from BACK to MEPHAM on the 13th November 2013 and read:

Our favorite house guest is coming. Ive explained what is happening with us 2nite and she understand our expectations.

It is unclear whether BACK was queried by Police in relation to this text.

After completing telco analysis at this point in the investigation Police had no evidence of criminal offending against Reiha.

Upon her return home a preliminary interview was conducted with Reiha to obtain a better understanding of her relationship with BACK. The interviewing officer was Sergeant HEMINGWAY.

Reiha was guarded in the information she shared. She confirmed that their friendship came about because she needed someone to talk to and help her through a difficult time in her life, however she wasn't completely truthful about aspects of their friendship. When this was highlighted to her she still failed to disclose anything further.

Samuel BACK

On the 13 June 2014 BACK was spoken to by D/C DOWNES.

BACK was described as being open and upfront about his friendship with Reiha stating that it was exactly that a friendship. He explained this friendship had begun at the end of the school term prior to Reiha leaving Gisborne Intermediate when a friend of hers had disclosed in confidence to him that Reiha was contemplating self harm.

Over the final few weeks of the school term he stated he reached out to Reiha gaining her trust, he confirmed he kept in contact with her once she had left school.

He admitted to allowing Reiha to visit his home address but stated that it was on the understanding that her parents were informed, something Reiha supposedly told him was the case although he never made contact with her parents to confirm this.

BACK admitted that he made some bad judgement calls relating to Reiha, however he maintained that he and his partner were only trying to help her.

When asked about the references made to Reiha where he called her 'Darling' he stated it was a term he used regularly and that he called everyone darling. With regards to Reiha calling him 'Big boy' he again stated that it was his nickname and that's what everyone called him.

In relation to the gifts, BACK stated the book was a going away present to inspire Reiha to write and the guitar was a loaner not a gift.

It is unclear what the outcome of this interview was and whether BACK was advised that should a disclosure be made in the future the case would be reopened.

Outcome

At the conclusion of the enquiries outlined above Police determined there was no evidence of any criminal offending by BACK against Reiha.

D/C DOWNES outlined his findings in an email to D/S ACKROYD, this email appears to be in place of a 258 filing report.

D/C DOWNES met with Reiha's parents Bruce and Hinemoa McCLELLAND, he discussed the investigation with them and explained that at this point in time there was no evidence of criminal offending against their daughter and that Police would be filing the matter.

On 30th July 2014 D/S ACKROYD reviewed the file prior to filing. He stated:

'Reviewed prior to filing. Known lines of enquiry have been completed. No evidential statement of complaint forthcoming. Given the overall circumstances no further investigative action required. There is insufficient evidence to provide a reasonable prospect of conviction - Evidential Test. Submitted for filing.'

The file was submitted to D/S/S Dave GREIG, the Eastern CP Co-ordinator for filing.

On the 1st August 2014 D/S/S GREIG reviewed the file, he emailed D/S ACKROYD and entered a NIA tasking requesting the following action occur prior to filing:

'Case reviewed. While there may not be evidence to support a criminal charge of grooming, on any objective assessment of the phone and email data the extent and nature of the contact between MCCLELLAND and BLACK has been completely inappropriate, especially in the context of a Teacher/Pupil relationship. This must be addressed and in these circumstances I believe that we have at least a moral obligation to fully inform the School and the Teachers Council of such. Case returned to D/Const for the following action to be taken; Consultation with Police Legal Services to prepare letters addressed to the Principal and BOT of BLACK's School and the Teachers Council that summarises the investigation and expresses our concerns.'

On the 4th August 2014 D/S/S Greig recorded in a NIA review:

'Advised by D/S AKROYD that the BOT and the Teachers Council have already been advised. Relevant documents scanned and attached to file. Known lines of enquiry have been completed. There is insufficient evidence available to provide a reasonable prospect of conviction. To be filed NFA.'

On the 6th August 2014 the file was filed.

7. Findings Upon Review

QAIF Review

The Quality Assurance Improvement Framework form was used as a base template for this review.

The following has been noted:

- Although deemed CPP no IJIP is attached or appears to have been completed. Regardless of whether we had a disclosure by Reiha this should have been completed.
- It appears that no consult with CYF took place until an update in the NIA narrative on the 17th April 2014.
- It is unclear what discussions took place regarding the initial safety of Reiha and any ongoing contact with BACK until the 17th April 2014 when D/C DOWNES advised BACK he was to have no further contact with her.
- There is no evidence that consideration has been given to the safety of other students that were still being taught by BACK. On the 17th April 2014 the school were advised of the complaint but no discussion is documented in relation to how the safety of other students was being ensured. BACK continued to teach until August 2014.
- There are only two victim contacts entered into the victim node, however D/C DOWNES has had ongoing contact with Mr and Mrs McCLELLAND and these have been recorded in the NIA narrative.
- One tasking and three Supervisor reviews by D/S ACKROYD have been entered after the file was assigned to D/C DOWNES. These appear to be generic and do not record appropriate oversight of the key points or decision making in relation to this file.

Case Investigation Plan (CIP)

The CIP was not endorsed by D/S ACKROYD until the 27th May 2014, some seven weeks after the file was assigned to D/C DOWNES.

From reviewing the CIP it is apparent that all relevant inquiries for this investigation have not to been considered or completed. The investigation appears to have been solely focussed on the telco data.

The only two witnesses listed as needing to be spoken to are Mr and Mrs McCLELLAND the parents of Reiha. Although identified as being witnesses it appears, no statements have been taken from either one of them, there are no notebook entries or jobsheets the only evidence of correspondence with them is in the NIA narrative.

While enquiries conducted did not establish evidence of any criminal offending, due to the position that BACK held, the possibility that Reiha may have disclosed in the future and to best inform the resolution decision the following should have been completed:

- Statement taken from Nurse Rhian Griffiths who raised her concerns which resulted in the ROC being made.
- Statement from Nurse Deb McKay who it is alleged witnessed Reiha sitting on BACKS knee.
- It is unclear whether consideration has been given to approaching Reiha's friend who BACK alleges came to him with her concerns.
- Statement taken from MEPHAM, BACKs wife, this is noted in the CIP however it states 'not required'.
- Enquiry as to the use of the nickname 'Big Boy'

Missing Documentation

The NIA narrative has been updated regularly by D/C DOWNES during the investigation. I have noted the following documentation is not attached to the file:

- Job sheet/notebook entry of the conversation D/C DOWNES had with Constable TRAFFORD who located Reiha in BACK/MEPHAMS vehicle after she ran away.
- A report/notes from Sgt HEMINGWAY who conducted the preliminary interview with Reiha.
- Notebook entries/job sheet in relation to the interview with BACK.

School/Teachers Council (now known as Education Council)

As outlined on the 17th April 2014 D/C DOWNES advised the Principal at Gisborne Intermediate, Mr NIVEN of the investigation Police were conducting.

This was followed up with an email on the 22nd May 2014 outlining the investigation to date, this is not attached to the file.

As outlined above D/S/S GREIG requested the school and Teachers Council be advised of the investigation prior to filing as there was nothing on the file to suggest this had been done.

He recorded that on the 4th August 2014 D/S AKROYD advised him that the BOT and Teachers Council had already been advised and that the relevant documents had been scanned and attached to the file.

On reviewing the file it is evident the documents referred to are documents authored by D/S ACKROYD in his role of Board Chair for Gisborne Intermediate School.

The first document is dated 4th July 2014, it is a letter from Theo ACKROYD to BACK in his capacity as the Board Chair. From what I have reviewed this is the first mention/evidence that D/S ACKROYD has any involvement with the school in this capacity.

The letter outlines action the BOT have taken to date and requests BACK attend a meeting with a subcommittee of four including Theo ACKROYD in his role as Board Chair.

The second document is another letter to BACK from Theo ACKROYD again in his role as Board Chair dated 28th July 2014. This letter outlines that BACK's actions have been deemed as serious misconduct by the subcommittee and that he is being issued with a final written warning. This letter outlines the verbal advice BACK had been given and documents the disciplinary outcomes.

It states that on the 15th July 2014 the BOT advised BACK that they would be reporting the matter to the Teachers Council for their consideration.

These documents are communication between the Board of Trustees and BACK and as such should not be recorded as attachments within NIA. There is no written confirmation of Police entering into discussion with the school regarding their requirement to notify the Teachers Council although clearly the school and BOT (through D/S ACKROYD'S involvement) were aware of this requirement.

To ascertain when the BOT had advised the Teachers Council of this investigation, on Wednesday the 3rd August 2016 I made enquiries with Alan Dodd, Investigator and Impairment Advisor at the now called Education Council.

He advised that on the 6th August 2014 the New Zealand Teachers Council were made aware of the investigation by a member of the NZ School Trustees Association (NZSTA) who was concerned that no mandatory report had been made by the Board.

This call from NZSTA was received two days after D/S ACKROYD advised D/S/S GREIG a notification had been made to the Teachers Council.

Mr DODD stated the Council contacted Police on 7 August 2014. They were referred to D/S/S GREIG. D/S/S GREIG was with D/S ACKROYD at the time of the call. During this discussion D/S ACKROYD in his role as Board Chair confirmed that BACK had been subject to an investigation.

The mandatory report from the school was received by the Council later that day. This was sent in by D/S ACKROYD in his role as Board Chair from his Police address.

The Council were very concerned that the BOT had not notified them of this investigation as soon as possible, BACK had remained teaching up until they were advised.

BACK subsequently signed a voluntary undertaking not to teach and ceased teaching on the 15th August 2014.

Mr DODD stated that all email correspondence between himself and D/S ACKROYD had been via the Police email address. This included requests for and supply of further documentation that had not been included with the mandatory report and all follow-up enquiries. The report from D/C DOWNES was provided to Mr DODD by D/S ACKROYD from his Police e-mail address on 13 August 2014.

In my view in his role as the CP Supervisor D/S ACKROYD should have been aware that the Teachers Council are required to be advised regarding an investigation of this nature as soon as possible. It is not necessarily the Police's role to make this notification but is a discussion that should be held with the school and in this situation had been requested by D/S/S GREIG.

8. Conclusion

There is no doubt that enquiries completed by Police did not establish evidence of criminal offending against Reiha, this was also compounded due to a lack of disclosure from her.

Having examined the investigation in my view the nature of the relationship and the intimate correspondence between BACK and Reiha indicates there was a strong likelihood that there was more to this friendship.

As stated regardless of the lack of disclosure or evidence of any criminal offending, due to the position that BACK held, the possibility that Reiha may have disclosed in the future and to prevent further offending Police were under an obligation to thoroughly investigate this case following all lines of enquiry.

In my view there was a lack of supervisory oversight and guidance throughout the investigation.

Under the Independence of investigations (safe processes)² policy that was in place in April 2014 D/S ACKROYD should have brought to D/S/S GREIGs attention that there was a potential or perceived conflict of interest due his role as Board Chair.

There is no evidence to suggest this was ever done or that D/C DOWNES was aware of this.

I submit this report for your information and forwarding to D/I Rob JONES and D/S/S Dave DeLANGE.



Natasha Allan
Detective Senior Sergeant
National Co-ordinator Child Protection

² Independence of investigations (safe processes) Policy as at April 2014